

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

FIDEL ANTONIO MENDEZ,

Defendant.

No. CR-12-6024-FVS

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS COUNT 2

THIS MATTER comes before the Court on Defendant's Motion to Dismiss Count 2 of the Superseding Indictment. (ECF No. 51). Defendant is represented by Diane E. Hehir. The Government is represented by Alexander C. Ekstrom.

BACKGROUND

On May 8, 2012, Defendant was charged by indictment with possession of an unregistered firearm, in violation of 26 U.S.C. §§ 5841, 5861(d) and 5871. (ECF No. 1). On September 11, 2012, a superseding indictment charged Defendant with possession of an unregistered firearm (Count 1) and felon in possession of a firearm (Count 2). (ECF No. 47).

Count 2 of the Superseding Indictment alleges a violation of 18 U.S.C. § 922(g)(1). Section 922(g)(1) criminalizes the possession of a firearm by an individual who has previously been convicted in any court of a "crime punishable by imprisonment exceeding one year." 18 U.S.C. § 922(g)(1). The charge in Count 2 is based on Defendant's 2006 juvenile adjudication of guilt for the offense of Unlawful Possession of a Firearm in the Second Degree.

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1 **DISCUSSION**

2 **I. Juvenile Adjudication**

3 Defendant argues that the predicate offense for Count 2 of the
4 superseding indictment, Defendant's 2006 Unlawful Possession of a
5 Firearm in the Second Degree, occurred when Defendant was a juvenile,
6 and juvenile adjudications do not constitute criminal convictions in
7 the state of Washington. *See Monroe v. Soliz*, 939 P.2d 205, 208
8 (Wash. 1997) ("Juveniles do not commit 'crimes.' Instead they commit
9 'offenses' or 'violations,' which the Legislature has defined as acts,
10 which if committed by an adult, would constitute a crime."); *Mills v.*
11 *Park*, 409 P.2d 646, 648 (Wash. 1966) ("A juvenile court is not a
12 criminal court."). Defendant asserts that because his 2006 juvenile
13 adjudication is not a conviction of a crime, it cannot be construed as
14 a crime punishable by more than one year for purposes of Count 2 in
15 this case.

16 Defendant and the Government agree that "[w]hat constitutes a
17 conviction of . . . a crime [punishable by imprisonment for a term
18 exceeding one year] shall be determined in accordance with the law of
19 the jurisdiction in which the proceedings were held." 18 U.S.C. §
20 921(a)(20). Therefore, in this case, the Court must examine the law
21 of the state of Washington in order to determine whether Defendant was
22 convicted of a crime punishable by imprisonment for a term exceeding
23 one year.

24 **A. Statutory Basis**

25 The Washington State Revised Code defines the Unlawful Possession
26 of a Firearm in the Second Degree offense for which Defendant was

1 adjudicated guilty as follows:

2 A person, whether an adult or juvenile, is guilty of the crime of
3 unlawful possession of a firearm in the second degree, if the
4 person . . . owns, has in his or her possession, or has in his or
her control any firearm . . . [i]f the person is under eighteen
years of age

5 Wash.Rev.Code 9.41.040(2)(a). The statute further provides that "a
6 person has been 'convicted', whether in an adult court or adjudicated
7 in a juvenile court, at such time as a plea of guilty has been
8 accepted, or a verdict of guilty has been filed"

9 Wash.Rev.Code 9.41.040(3). Unlawful Possession of a Firearm in the
10 Second Degree is a class C felony in the state of Washington,
11 punishable by up to 5 years in prison. Wash.Rev.Code 9.41.040(2)(b)
12 (possession in the second degree is a class C felony); Wash.Rev.Code
13 9A.20.021(1)(c) (a class C felony warrants imprisonment for up to 5
14 years).

15 Based on a review of Washington State's relevant criminal
16 statutes, Defendant's juvenile adjudication of guilt for Unlawful
17 Possession of a Firearm in the Second Degree qualifies as a
18 conviction, of a crime, which is punishable by imprisonment for a term
19 exceeding one year. See *State v. McKinley*, 929 P.2d 1145, 1149-1150
20 (Wash. 1997) (holding that juvenile adjudication of guilt constitutes
21 "conviction" for purposes of Washington's unlawful possession of a
22 firearm statute).

23 **B. Case Law**

24 The case law cited by Defendant in support of his argument that
25 his 2006 juvenile adjudication is not a conviction of a crime is not
26 persuasive authority.

1 The *Mills* case is inapposite. As indicated by the Government,
2 while the 1966 *Mills* case stated that "[a] juvenile court is not a
3 criminal court," the case actually held that, for purposes of
4 interrogatories in a civil case, the fact that an individual
5 surrendered his driver's license in juvenile court does not mean he
6 was convicted of a crime. *Mills v. Park*, 409 P.2d 646, 648 (Wash.
7 1966).

8 The *Monroe* case is distinguishable. The court in *Monroe*
9 addressed a class action suit challenging the constitutionality of
10 Wash.Rev.Code 13.40.280 which permitted DSHS to administratively
11 transfer a juvenile offender from a detention facility to an adult
12 prison. *Monroe v. Soliz*, 939 P.2d 205, 207-208 (Wash. 1997). Chapter
13 13 of the Revised Code of Washington provides, in relevant part, "[a]n
14 order of court adjudging a child a juvenile offender or dependent
15 under the provisions of this chapter shall in no case be deemed a
16 conviction of crime." Wash.Rev.Code 13.04.240. However, in this
17 case, the applicable state statute is Wash.Rev.Code 9.41.040(2).¹

18 Defendant next asserts that the Court should apply case law from
19 the Fourth Circuit to the issue in this case. See *United States v.*
20 *Walters*, 359 F.3d 340, 346 (4th Cir. 2004) (holding that defendants'
21 prior juvenile adjudications could not serve as underlying convictions
22 necessary to support felon in possession of firearm charges in the
23 United States District Court for the Eastern District of Virginia).

24
25 ¹As discussed above, a juvenile adjudication of guilt
26 qualifies as a "conviction" for purposes of Washington's unlawful
possession of a firearm statute. *State v. McKinley*, 929 P.2d at
1149-1150.

1 The *Walters* court applied Virginia State law. In contrast to the
2 Washington State statute discussed above, under Virginia law "[a]
3 person who is convicted of a felony is permanently barred from
4 possessing a firearm, whereas a person adjudicated as a juvenile is
5 barred from possessing a firearm only until the age of twenty-nine."
6 *Walters*, 359 F.3d 346 (citing Va. Code Ann. § 18.2-308.2). The Fourth
7 Circuit also indicated that the predecessor to the relevant Virginia
8 State statute "explicitly removed juvenile adjudications from
9 consideration as convictions for purposes of collateral consequences
10 under Virginia law." *Walters*, 359 F.3d at 344 n.2. That has not been
11 the case in Washington State. Washington has consistently treated
12 juvenile adjudications under Wash.Rev.Code 9.41.041 as criminal
13 convictions. The Fourth Circuit's interpretation of Virginia's state
14 law is not binding case law in this district and is not persuasive
15 authority with respect to the instant issue.

16 **II. Due Process**

17 Defendant next asserts that due process considerations require
18 dismissal. See *United Stats v. Tighe*, 266 F.3d 1187 (9th Cir. 2001)
19 (holding that a prior juvenile adjudication could not serve as a
20 predicate conviction for a sentencing enhancement under 18 U.S.C. §
21 924 because the underlying conduct was never proven to a jury).

22 In *Tighe*, the Ninth Circuit did not conclude that the juvenile
23 adjudication could not be used in the context of sentencing, just that
24 it needed to be presented to the jury. *Id.* at 1194. Here, the
25 Government asserts that Defendant's juvenile conviction under
26 Wash.Rev.Code 9.41.040 will be proved to the jury. (ECF No. 69 at

15). Furthermore, Defendant is currently facing trial, not a sentencing hearing. Defendant's argument in this regard is misplaced.

III. Rule 609

Defendant lastly requests that the Court prohibit the Government from referencing any juvenile adjudication of Defendant at trial under Rule 609. Defendant contends that a juvenile adjudication is not suitable for impeachment at trial. See Fed.R.Evid. 609(d).

Rule 609 applies to an attack of a witness's character for truthfulness by evidence of a criminal conviction. Fed.R.Evid. 609(a). However, the Government offers evidence of Defendant's 2006 conviction to prove an element of the charged offense in Count 2, not to attack Defendant's character. Rule 609 is not applicable to this issue. Defendant's motion to exclude this evidence is denied.

RULING

Based on the foregoing, the Court determines that, pursuant to Washington State law, a juvenile adjudication under Wash.Rev.Code 9.41.040 is a crime punishable by imprisonment exceeding one year for purposes of 18 U.S.C. § 922(g)(1). Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss Count 2 (**ECF No. 51**) is **DENIED**.

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this order and furnish copies to counsel.

DATED this 9th day of October, 2012.

S/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge